

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

JAMES S. HALVORSEN,)	
)	
Plaintiff,)	
)	
v.)	
)	
JO ANNE B. BARNHART,)	Case No. 02-2123
)	
COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	
Defendant.)	

ORDER

In January 2003, an administrative law judge (hereinafter “ALJ”) denied Plaintiff James S. Halvorsen Social Security benefits based on his determination that Plaintiff was not disabled within the meaning of the Social Security Act (hereinafter “Act”). The ALJ based this decision on his findings that Plaintiff did not meet or equal an impairment in Appendix 1 to Subpart P, Regulations No. 4 (hereinafter “the listing”) coupled with the determination that Plaintiff’s impairment did not prevent him from doing any other work. (R. 16-22.)

In May 2002, Plaintiff filed a Complaint (#1) against Jo Anne B. Barnhart, Commissioner of the Social Security Administration, seeking judicial review of the final administrative decision. In October 2002, Plaintiff filed a Motion for Summary Judgment (#11) and in November 2002, Defendant filed a Motion for an Order Which Affirms the Commissioner’s Decision (#17). After reviewing the record and the parties’ memoranda, this Court **GRANTS** Plaintiff’s Motion for Summary Judgment (#11) and **DENIES** Defendant’s Motion for an Order Which Affirms the Commissioner’s Decision (#17). The Court also orders that the decision be **REMANDED** to the ALJ for articulation.

I. Background

James S. Halvorsen was born on December 9, 1954, and is 49 years old. (R. 41-42.) He has a high school education and is single with no children. (R. 41-42.) Mr. Halvorsen worked as a bricklayer for eighteen years, from 1978 to 1996. (R. 115-23.)

Mr. Halvorsen alleges disability due to a back injury beginning April 16, 1996. (R. 102.) He applied for disability insurance benefits (hereinafter “DIB”) on April 22, 1998. (R. 102.) In July 1998, Mr. Halvorsen’s application for DIB was denied (R. 60, 75-78) and in August 1998, he submitted a request for reconsideration (R. 61, 80-82). After a hearing conducted in June 1999, ALJ Slater denied Mr. Halvorsen’s request for reconsideration in his decision dated July 2, 1999. (R. 22-29.) ALJ Slater determined that although Mr. Halvorsen could not perform his past heavy work as a bricklayer, he could perform light work. (R. 67.) In August 1999, Mr. Halvorsen requested review by the Appeals Council. (R. 87.) The Appeals Council remanded the case to an ALJ for further proceedings because the hearing tape could not be located. (R. 90-92.)

ALJ Mondri conducted supplemental proceedings in October 2001 (R. 38-59) and denied Mr. Halvorsen’s request for DIB in his decision dated January 23, 2002 (R. 16-22). Mr. Halvorsen’s request for review by the Appeals Council (R. 10-11) was denied in March 2002 (R. 8-9). In May 2002, Mr. Halvorsen filed a complaint seeking review of the final administrative decision. In October 2002, Mr. Halvorsen filed a Motion for Summary Judgment (#11) and in November 2002, the Defendant filed a Motion for an Order Which Affirms the Commissioner’s Decision (#17).

II. Standard of Review

In reviewing the ALJ’s decision, this Court does not try the case *de novo* or replace the ALJ’s findings with the Court’s own assessment of the evidence. *Pugh v. Bowen*, 870 F.2d 1271, 1274 (7th Cir. 1989). The ALJ’s findings as to any fact, if supported by substantial evidence, are conclusive. 42 U.S.C. § 405(g). Thus, the question before the court is not whether Plaintiff is, in fact, disabled, but whether the evidence substantially supports the ALJ’s findings. *Diaz v. Chater*, 55 F.3d 300, 306 (7th Cir. 1995). The Supreme Court has defined substantial evidence as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 91 S.Ct. 1420, 1427 (1971). In other words, so long as, in light of all the evidence, reasonable minds could differ concerning whether Plaintiff is disabled, the Court must affirm the ALJ’s decision denying

benefits. *Books v. Chater*, 91 F.3d 972, 977-78 (7th Cir. 1996).

III. Analysis

Mr. Halvorsen argues that the Court should grant summary judgment for the following reasons: (1) the ALJ failed to articulate his reasons for finding that Mr. Halvorsen's impairment does not meet or equal a listing; (2) substantial evidence does not support the ALJ's finding that Mr. Halvorsen's impairment does not meet or equal a listing; (3) substantial evidence does not support the ALJ's finding that Mr. Halvorsen's testimony and allegations of disabling symptoms and limitations are not credible; (4) substantial evidence does not support the ALJ's finding that Mr. Halvorsen has the residual functional capacity (hereinafter "RFC") to perform light work; and (5) substantial evidence does not support the ALJ's finding that Mr. Halvorsen's impairment prohibits him from returning to work as a bricklayer, but does not prohibit him from performing light work.

A. The ALJ's Decision

The regulations set forth a five-step process for the ALJ to use in determining whether the Plaintiff is disabled within the meaning of the Act. 20 C.F.R. § 404.1520(b)-(f). These five steps are as follows: (1) whether the claimant has recently performed substantial gainful activity; (2) whether the claimant suffers from a severe impairment; (3) whether the claimant's impairment meets or exceeds a listing; (4) whether the claimant can perform his past work; and (5) whether the claimant can do any other work. If the claimant satisfies the first three steps, the ALJ will find that he is disabled within the meaning of the Act. *See* 20 C.F.R. § 404.1520(d); *Pope v. Shalala*, 998 F.2d 473, 477 (7th Cir. 1993). If the ALJ determines that the claimant does not satisfy an impairment in the listing, the ALJ has to evaluate steps four and five. *See* 20 C.F.R. § 404.1520(e)-(f); *Pope*, 998 F.2d at 477. After the ALJ determines that the claimant cannot perform his past work, the burden switches to the ALJ to show that the claimant can perform other jobs. *Pope*, 998 F.2d at 477.

The ALJ made the following findings: (1) Mr. Halvorsen did not perform substantial gainful

activity after the alleged onset of disability; (2) he has degenerative disc disease of the lumbar spine and lumbar disc herniation, with his back impairment producing limitations that met the definition of “severe”; (3) his impairment does not meet or equal an impairment in the listing; (4) his RFC is light according to 20 C.F.R. § 404.1567(b); (5) Mr. Halvorsen’s testimony is not credible when compared with the objective evidence using factors in the Social Security Ruling 96-7; and (6) other jobs exist in significant numbers in the economy that the claimant can perform, consistent with his younger age, high school education, work experience, and functional limitations. (R. 16-22.) Based on the finding that the Mr. Halvorsen could perform a significant number of jobs in the economy, the ALJ determined that Mr. Halvorsen was not disabled within the meaning of the Act.

B. Articulation

Mr. Halvorsen argues that the ALJ failed to articulate the reasons why his impairment did not meet or equal an impairment in the listing, specifically Appendix 1 to Subpart P, Regulations No. 4, Listing 1.05(c). Step three is an important step in the five-step process. Had the ALJ decided that Mr. Halvorsen satisfied an impairment in the listing, Mr. Halvorsen would have been declared disabled within the meaning of the Act and he would have been eligible to receive DIB. *See* 20 C.F.R. § 404.1520(d); *Pope*, 998 F.2d at 477. The issue of articulation concerning step three is important not only for Mr. Halvorsen to understand the ALJ’s decision, but also for “meaningful appellate review” of the ALJ’s decision. *Bridger v. Apfel*, 18 F. Supp. 2d 900, 904 (N.D. Ill. 1998). This Court cannot determine whether the ALJ’s conclusion regarding step three is supported by substantial evidence if the ALJ fails to articulate how he came to this decision. Furthermore, since steps four and five are not addressed unless the conclusion of step three is answered in the negative, this Court cannot determine whether the ALJ’s conclusion concerning steps four and five are supported by substantial evidence without first dealing with step three. *See* 20 C.F.R. § 404.1520(d); *Pope*, 998 F.2d at 477. As a result, this Court must consider the issue of articulation before it can address the other issues in this case.

In *Groves v. Apfel*, 148 F.3d 809, 811 (7th Cir. 1998), the court refused to uphold the ALJ's decision because "the opinion fail[ed] to build a bridge from the evidence to the conclusion and is thus analytically inadequate--in a word, unreasoned" Although the ALJ "does not need to provide a written evaluation of every piece of evidence that is presented," the ALJ must at least minimally articulate his analysis of the evidence. *Steward v. Bowen*, 858 F.2d 1295, 1298; *Bridger*, 18 F. Supp. 2d at 905.

In the present case, the ALJ has failed to articulate his reasons for his decision regarding step three. The ALJ addressed step three as follows:

The third step of the sequential evaluation requires determining whether the claimant's condition meets the requirements or equals the level of severity contemplated for any impairment listed in Appendix 1 to Subpart P, Regulations No. 4. His impairment does not.

(R.18.) (Emphasis added.)

Although subsequent paragraphs in this case include evidence that the ALJ may have considered in reaching his conclusion concerning step three, if evidence in subsequent paragraphs was not intended to explain the ALJ's reasons for his conclusion, then the ALJ clearly breached his duty to explain his decision with particularity. *Bridger*, 18 F. Supp. 2d at 904. In this case, there is no indication that the ALJ used evidence in subsequent paragraphs to evaluate step three. Furthermore, the ALJ clearly shifted gears from step three to an evaluation of Mr. Halvorsen's RFC before discussing this evidence, stating as follows: "Before this decision can proceed to the remaining steps of the sequential evaluation, the claimant's residual functional capacity must be established." (R.18.) It is not the duty of the reviewing court to search out and guess the reasons for the ALJ's conclusions. Because subsequent paragraphs do not articulate with particularity the reason for the ALJ's decision, this Court cannot affirm the decision.

IV. Summary

For the reasons set forth above, this Court **GRANTS** the Plaintiff's Motion for Summary Judgment (**#11**) and **DENIES** the Defendant's Motion for an Order Which Affirms the Commissioner's Decision (**#17**). The Court now orders that the decision be **REMANDED** pursuant to sentence 4 of 42 U.S.C. § 405(g)¹ to the ALJ to articulate the reasons for his conclusion that Mr. Halvorsen's impairment does not meet or equal the listing under step three.

ENTERED this 16th day of July, 2003.

Signature on Clerk's Original

DAVID G. BERNTHAL
UNITED STATES MAGISTRATE JUDGE

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¹Under 42 USCA § 405(g), Sentence 4, "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing."

